

AO 248 (Rev. 08/20) ORDER ON MOTION FOR SENTENCE REDUCTION UNDER 18 U.S.C. § 3582(c)(1)(A)

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

KEVIN LEWIS

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 10/29/2023

Case No. 1:16-cr-396-9

ORDER ON MOTION FOR
SENTENCE REDUCTION UNDER
18 U.S.C. § 3582(c)(1)(A)

(COMPASSIONATE RELEASE)

Upon motion of the defendant the Director of the Bureau of Prisons for a reduction in sentence under 18 U.S.C. § 3582(c)(1)(A), and after considering the applicable factors provided in 18 U.S.C. § 3553(a) and the applicable policy statements issued by the Sentencing Commission,

IT IS ORDERED that the motion is:

GRANTED

The defendant's previously imposed sentence of imprisonment of _____ is reduced to

. If this sentence is less than the amount of time the defendant already served, the sentence is reduced to a time served; or

Time served.

If the defendant's sentence is reduced to time served:

This order is stayed for up to fourteen days, for the verification of the defendant's residence and/or establishment of a release plan, to make appropriate travel arrangements, and to ensure the defendant's safe release. The defendant shall be released as soon as a residence is verified, a release plan is established, appropriate travel arrangements are made,

and it is safe for the defendant to travel. There shall be no delay in ensuring travel arrangements are made. If more than fourteen days are needed to make appropriate travel arrangements and ensure the defendant's safe release, the parties shall immediately notify the court and show cause why the stay should be extended; or

There being a verified residence and an appropriate release plan in place, this order is stayed for up to fourteen days to make appropriate travel arrangements and to ensure the defendant's safe release. The defendant shall be released as soon as appropriate travel arrangements are made and it is safe for the defendant to travel. There shall be no delay in ensuring travel arrangements are made. If more than fourteen days are needed to make appropriate travel arrangements and ensure the defendant's safe release, then the parties shall immediately notify the court and show cause why the stay should be extended.

The defendant must provide the complete address where the defendant will reside upon release to the probation office in the district where they will be released because it was not included in the motion for sentence reduction.

Under 18 U.S.C. § 3582(c)(1)(A), the defendant is ordered to serve a “special term” of probation or supervised release of months (not to exceed the unserved portion of the original term of imprisonment).

The defendant’s previously imposed conditions of supervised release apply to the “special term” of supervision; or

The conditions of the “special term” of supervision are as follows:

- The defendant's previously imposed conditions of supervised release are unchanged.
- The defendant's previously imposed conditions of supervised release are modified as follows:
 - DEFERRED pending supplemental briefing and/or a hearing. The court DIRECTS the United States Attorney to file a response on or before _____, along with all Bureau of Prisons records (medical, institutional, administrative) relevant to this motion.
 - DENIED after complete review of the motion on the merits.

FACTORS CONSIDERED (Optional)

The Court has considered Kevin Lewis's application for compassionate release (the "Application") and its supporting materials, Dkt. No. 851, as well as the materials presented to the Court in connection with his sentencing. The application for compassionate release should be denied for two principal reasons.

First, Mr. Lewis has not shown that he has satisfied the statutory preconditions for compassionate release. 18 U.S.C. § 3582(c)(1)(A) reads in pertinent part as follows: "The court may not modify a term of imprisonment once it has been imposed except that . . . the court, upon motion of the Director of the Bureau of Prisons, or upon motion of the defendant after the defendant has fully exhausted all administrative rights to appeal a failure of the Bureau of Prisons to bring a motion on the defendant's behalf or the lapse of 30 days from the receipt of such a request by the warden of the defendant's facility, whichever is earlier, may reduce the term of imprisonment . . ." Id. The language of this provision ("[t]he court may not") expressly prohibits the Court from granting relief unless the statutory preconditions are satisfied. Mr. Lewis's

application states that he filed his request with the Warden on October 5, 2023. The Application was filed on October 24, 2023, less than 30 days later. Mr. Lewis's application states that he did receive a decision from the Warden denying the application. Application at 3. But he does not provide the date of the denial, and later in his Application, Mr. Lewis asks for the Court to "waive requirement to exhaustion by administrative remedy procedure," id. at 5, which suggests that he did not complete the exhaustion procedure before filing the Application. To the extent that the Application requires that the Court waive the statutory preconditions to filing the motion, the Court may not do so. As a result, the Court must deny the Application because Mr. Lewis has not demonstrated satisfaction of the statutory exhaustion requirement.

Second, the Application must be denied because Mr. Lewis has not shown extraordinary and compelling reasons for his release. The Court recognizes that the "First Step Act freed district courts to consider the full slate of extraordinary and compelling reasons that an imprisoned person might bring before them in motions for compassionate release." United States v. Brooker, 976 F.3d 228, 237 (2d Cir. 2020). Here, however, Mr. Lewis has not shown the existence of such circumstances. He writes that he originally intended to request compassionate release to be able to care for his ailing mother. However, by the time that he filed the Application, sadly, his mother had already passed. Application at 5. As a result, the only remaining justification for early release expressed in the Application is the following: "I would like to be home earlier than my early release date." This does not constitute an extraordinary or compelling reason for Mr. Lewis's early release.

The Court extends its condolences to Mr. Lewis and to his family.

The Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this order would not be taken in good faith, and therefore IFP status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

The Clerk of Court is directed to terminate the motion pending at Dkt. No. 851 and to mail a copy of this order to Mr. Lewis.

DENIED WITHOUT PREJUDICE because the defendant has not exhausted all administrative remedies as required in 18 U.S.C. § 3582(c)(1)(A), nor have 30 days lapsed since receipt of the defendant's request by the warden of the defendant's facility.

IT IS SO ORDERED.

Dated:

October 29, 2023



GREGORY H. WOODS
UNITED STATES DISTRICT JUDGE